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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

MEMORANDUM

TO: Kathleen O'Brian Ham, Esq.
FROM: Tom Davidson, P.C. *TD*
Michael S. Ray
DATE: January 25, 1995
RE: PCS Questions

Thank you for providing us with the opportunity to submit several questions that our clients have regarding various issues related to the upcoming "C" entrepreneur Block broadband PCS auction for designated entities. We have attempted to be as precise as we can in framing our questions, but if you need more information in order to answer a particular question, please give us a call at (202) 887-4000. Specifically, the following issues are of concern to us:

Issue 1: Eligibility to bid in the entrepreneurs' blocks is limited to entities that, together with their affiliates and attributable investors, have gross revenues of less than \$125 million in each of the last two years and total assets of less than \$500 million at the time they file their FCC Form 175. A small business is defined as a company with annual gross revenues for the past three years of less than \$40 million. For purposes

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of determining compliance with these two financial earnings caps, the FCC has said that it will count the gross revenues, total assets and personal net worth of each member of a designated entity's control group. In the case of an applicant attempting to qualify as a minority-owned small business, if a member of the applicant's control group is a minority and very wealthy, we assume that his personal assets (his personal net worth) do not count for the purposes of determining eligibility as an entrepreneur or a small business? Is this correct? If the minority controls other businesses, do the revenues and assets of these businesses or "affiliates" count for purposes of determining eligibility as an entrepreneur or small business.

Issue 2: If a minority or women-owned control group owns at least 50.1 percent of the applicant's equity (and controls at least 50.1 percent of the voting stock of the corporate applicant), then the gross revenues, total assets, and personal net worth of any other investor are not considered for purposes of determining eligibility as an entrepreneur unless the investor holds more than 49.9 percent of the applicant's passive equity. First, can this "50.1 percent" option be used for the purpose of qualifying for a bidding credit as a small business. That is, can this option only be used by women and minority groups to qualify for the 15 percent women/minority bidding credit (and presumably the small business credit), or can that option also be

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used by non-minority applicants to qualify for the 10 percent small business credit.

Second, under this "50.1" percent option for qualifying minority/women applicants, 30 percent of the applicant's total equity must be held by qualifying minority or women investors. The remaining 20.1 percent can be held by "qualifying investors". What does the FCC mean by "qualifying investors?" Specifically, can the remaining 20.1 percent in equity be held by non-minorities that qualify only as small businesses but do not qualify as institutional investors, existing investors in a preexisting entity that is a member of the control group or management of the applicant. If so, can the applicant still receive a 25 percent bidding credit?

Issue 3: In the "50.1 percent" and the "25 percent" designated entity equity options, certain noncontrolling investors can invest in the applicant's control group, including noncontrolling individual management team members who may hold their interests through stock options. Can these management team members (who otherwise would qualify as noncontrolling investors in the control group) be granted stock options in the applicant itself rather than in the control group if the exercise of those options would cause the control group's equity to drop below 50.1 percent in the "50.1 percent" option and 25 percent in the "25 percent" option?

Issue 4: A control group of a designated entity is comprised of a limited partnership, with the general partner and the limited partners all minorities. For purposes of the "25 percent" designated entity option, the general partner is relied on to comply with the control group's minimum voting share requirement (50.1 percent) but individually will not have sufficient equity in the control group to meet the 25 percent equity requirements. Thus, the interests of the limited partners and the general partner must be aggregated to comply with the control group's minimum equity requirement (25 percent). Is this permissible?

Issue 5: Does spousal attribution apply for purposes of the anti-collusion rule? For example, can a husband and wife own noncontrolling attributable interests in two competing applicants for spectrum blocks in the same geographic area if they can certify under the anti-collusion rule that they have not spoken to any bidders about the substance of their applicant's bids or bidding strategies?